

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MATTHEW FOGEL

Plaintiff,

v.

GRASS VALLEY POLICE DEPARTMENT;
GREG MCKENZIE; JASON PERRY;
WESLEY COLLINS; MICHAEL HOOKER;
JAROD JOHNSON; and GARY
MCCLAUGHRY,

Defendants.

CIV-S-05-00444 DFL KJM

MEMORANDUM OF OPINION
AND ORDER

Plaintiff Fogel requests that the court amend the scheduling order to allow more time to resolve a discovery dispute involving records from defendants' personnel files. (Burns Decl. ¶ 13.)

The motion is denied.

On June 27, 2005, Fogel's attorney informed defendants that she would file a motion to compel discovery of items she allegedly requested from them on May 31, 2005. (Ex. C to Opp'n to Plt's Mot. to Compel.) However, the motion was not filed until October 6, 2005. Under the scheduling order, the discovery cut off was October 28, 2005. (Order 6/24/05.) Because of the delay in

1 filing the motion to compel, the motion could not be resolved and
2 the discovery taken before the discovery cut off.

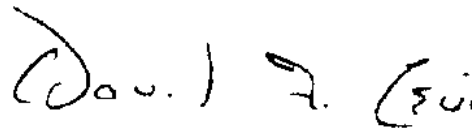
3 Under Fed.R.Civ.P. 16(b), a "scheduling order shall not be
4 modified except by leave of court and upon a showing of good
5 cause." The "good cause" standard "primarily considers the
6 diligence of the party seeking the amendment." Johnson v.

7 Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992).

8 "The district court may modify the pretrial schedule if it cannot
9 reasonably be met despite the diligence of the party seeking the
10 extension." Id. (citations omitted). However, carelessness is
11 not a grounds for relief. Id. Counsel for plaintiff does not
12 explain why she waited three months to file the motion to compel.
13 The scheduling order warns counsel to schedule discovery early so
14 that any disputes can be resolved well before the end of the
15 discovery period. Because plaintiff fails to show that he acted
16 with diligence in pursuing the disputed discovery, the court
17 DENIES Fogel's request to modify the scheduling order.

18 IT IS SO ORDERED.

19 Dated: 11/18/2005
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23 DAVID F. LEVI
24 United States District Judge
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